Supreme Court, U.S.
FILED
SEP 22 1997
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No. 97-420

In The

Supreme Court of the United States

October Term, 1996

J.E. MERIT CONSTRUCTORS, INC.,

Petitioner,

v.

JOHN L. DAVIS,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

SUPPLEMENTAL BRIEF OF PETITIONER

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MAY IT PLEASE THE COURT:

Pursuant to Supreme Court Rule 15.8, Petitioner, J.E. Merit Constructors, Inc., must advise the Court that on September 8, 1997, it filed in the district court alternative motions for a new trial and for relief from judgment under F.R.Ci.P. Rules 59 and 60(b)(6). These motions had to be filed while this case is *sub judice* in this Court to satisfy Fifth Circuit precedent which suggests that – to be timely – requests for relief under Rule 60(b)(6) must be filed while the case is *sub judice*. *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743 (5th Cir. 1995); *Bailey v. Ryan Stevedoring Co.*, 894 F.2d 157, 159 n.1 (5th Cir.), *cert. denied*, 498 U.S. 829, 111 S.Ct. 89, 112 L.Ed.2d 61 (1990).

Merit has requested relief in the district court only to satisfy the procedural requirements for Rule 60(b)(6) relief, but continues to believe that this case calls for a grant/vacate/remand order directed by this Court to the Fifth Circuit Court of Appeal in light of the intervening decision of the Louisiana Supreme Court in *Keith v. United States Fidelity & Guaranty Co.*, 694 So.2d 184 (La. 1997).

Merit's district-court motions have been noticed for a November 7, 1997 hearing, without oral argument. However, the district judge has been made aware of Merit's pending writ application to this Court and may seek guidance from this Court before acting on Merit's motions. Merit will promptly advise this Court of any intervening developments.

Respectfully submitted,

By Attorney,

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